

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
v.) Criminal No. 05-65
ANTHONY T. ROBERTSON) Civil No. 09-1545

MEMORANDUM ORDER

AND NOW, this 2nd day of December, 2009, petitioner Anthony T. Robertson having filed a pro se motion under 28 U.S.C. §2255 to vacate, set aside or correct sentence (Document No. 125), IT IS ORDERED that said motion be, and the same hereby is, **dismissed without prejudice.**

On April 20, 2006, petitioner pled guilty to Count One of the Superseding Indictment filed at Criminal No. 05-65, charging him with possession of a firearm by a convicted felon. Petitioner was sentenced on October 16, 2006, to a term of 24 months imprisonment and 3 years supervised release. Petitioner did not appeal his sentence.

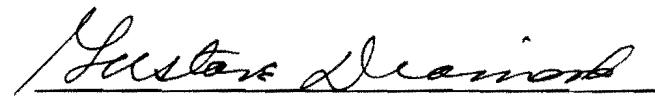
On December 26, 2007, petitioner was released from prison and began serving his term of supervised release. On November 20, 2008, the probation office filed a petition on supervised release alleging that petitioner had violated the condition of supervision that he shall not commit another federal, state or local crime by

possessing with intent to deliver crack cocaine. At a supervised release violation hearing held on January 22, 2009, the court found that petitioner violated his supervised release, revoked his term of supervision, and sentenced him to serve a term of 24 months imprisonment to be followed by 12 months supervised release. Subsequently, petitioner filed a direct appeal of that sentence, which currently is pending in the United States Court of Appeals for the Third Circuit. Nonetheless, on November 20, 2009, petitioner filed the instant §2255 motion with this court raising issues that already are the subject of his appeal.

The well-established general rule is that, absent extraordinary circumstances, a district court should not consider a §2255 motion while a defendant's direct appeal is pending. See United States v. Robinson, 8 F.3d 398, 405 (7th Cir. 1993); see also Kapral v. United States, 166 F.3d 565, 572 (3d Cir. 1999) ("defendants have long been discouraged from commencing §2255 proceedings before the conclusion of direct review"); Advisory Committee Notes to Rule 5, Rules Governing §2255 Proceedings ("courts have held that [a §2255] motion is inappropriate if the movant is simultaneously appealing the decision").

Petitioner has not alleged, and the court does not find, any extraordinary circumstances in this case that warrant consideration of petitioner's §2255 motion by this court during the pendency of his direct appeal. Accordingly, petitioner's

§2255 motion will be dismissed without prejudice to his re-filing the motion following final disposition of his direct appeal.


Gustave Diamond
Gustave Diamond
United States District Judge

cc: Soo C. Song
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